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In The

Supreme Court of the United States

CITIZENS FOR UNIFORM TAXATION,

Petitioner,

v.

NORTHPORT PUBLIC SCHOOL DISTRICT,
LELAND PUBLIC SCHOOL DISTRICT,
GLEN LAKE COMMUNITY SCHOOL DISTRICT, and
SUTTONS BAY SCHOOL DISTRICT,
and
MICHIGAN STATE BOARD OF EDUCATION,
MICHIGAN DEPARTMENT OF TREASURY, and
MICHIGAN STATE TAX COMMISSION,

Respondents.

On Petition For A Writ Of Certiorari To The Michigan Court Of Appeals

PETITION FOR WRITT OF CERTIORARI

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QUESTIONS PRESENTED

Non-citizens of Michigan who own real property in the State of Michigan have such property subject to a tax for the exclusive purpose of the local schools. The only way to avoid this tax is to declare residency in Michigan and reside in such property. The non-citizens may not send their children to the local school. Time actually spent in the Michigan home does not affect the tax upon it. Conversely, if the non-citizen was to declare citizenship in the taxed home within a school district, but was never to live in it, the property would receive a tax abatement and the newly minted citizen could send his/her children to the local school. This tax abatement is popularly called a "homestead" exemption and is solely for Michigan citizens. This exclusion can be applied only to one home. However, non-citizens can never receive the exclusion, even if the Michigan home is their only real property.

(1) Does the Privileges and Immunities Clause protect non-citizen homeowners from property taxes to which citizen homeowners are not subject?

(2) Does the Equal Protection Clause protect non-citizen homeowners from property taxes to which citizen homeowners are not subject?

PARTIES TO THIS PROCEEDING

The names of all parties are contained in the caption of this case except for those members of the class comprised of non-homestead property owners within the four defendant school districts. Petitioner is a Michigan non-profit corporation[1] representing members of the class of non-homestead property owners within the four defendant school districts.

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[1] Petitioner does not have any parent or subsidiary corporations related to it.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Citizens for Uniform Taxation, on behalf of the over 4,000 non-homestead, non-citizen property owners in the four defendant school districts in Michigan respectfully petition for a writ of certiorari to review the decision and judgment entered on January 7, 2000 by the Court of Appeals of the State of Michigan.

OPINIONS AND ORDERS BELOW

The opinion of the Michigan Court of Appeals is reproduced in the Appendix at 13a. It is reported at 239 Mich. App. 284, 608 N.W. 2d 480 (2000). The decision of the Circuit Court for the County of Leelanau is reproduced in the Appendix at 1a. The order by the Michigan Supreme Court denying Petitioner leave to appeal is reproduced in the Appendix at 20a.

JURISDICTION OF THIS COURT

On June 26, 2000 the Michigan Supreme Court denied Petitioner leave to appeal after a timely request for certiorari was filed as a consequence of the Michigan Court of Appeals' decision filed on January 7, 2000. The Court of Appeals' decision followed the decision rendered by the trial court on February 11, 1998.

This Court has jurisdiction to hear this case pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, § 2 of the United States Constitution provides:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Section 1 of the Fourteenth Amendment of the United States Constitution provides that,

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Michigan constitutional provisions involved in this case are Article II, § 2 and Article IX, § 3 of the Michigan Constitution of 1963. The state statutory provisions involved in this case are MCLA § 168.492; MSA § 6.1492, MCLA § 211.7dd; Act No. 206 of the Public Acts of 1893, MCLA § 380.1 *et seq.*; MSA § 15.4001 *et seq.* (The Revised School Code), MCLA § 380.1211d; MSA § 15.41211d, and MCLA § 554.702; Act No. 116 of the Public Acts of 1974.

STATEMENT OF THE CASE

This case presents the question regarding the constitutionality of a state law that allows school districts to impose taxes on homes located within their districts specifically because the owners of such homes have chosen not to become citizens[2] of that specific district. Pursuant to that state authorization, school districts have imposed a taxation scheme that requires non-citizens to pay property taxes that are higher – sometimes even three times higher – than citizens of that district must pay.

A. The Parties

Petitioner is a Michigan non-profit corporation representing members of the class of non-homestead property owners within the four defendant school districts. The trial court granted Petitioner's motion to certify this matter as a class action. The State of Michigan intervened and assumed the defense on behalf of the Michigan State Board of Education, the Michigan Department of Treasury, and the Michigan State Tax Commission.

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[2] The petition will use the terms resident and citizen somewhat interchangeably. However, as noted below, the Michigan law under review in this case is particularly onerous because residency does not suffice for relieving one from the special tax burden. Instead, persons must reside in the district, and declare this place their true and fixed home.

B. General Background

This case was submitted to the trial court on cross-motions for summary disposition. At that time, the Petitioner challenged the constitutional validity of Section 1211 of the Revised School Code, MCL § 380.1 *et seq.*; MSA § 15.4001 *et seq.*, arguing, in part, that the Michigan law violated both the Privileges and Immunities Clause and the Equal Protection Clause of the United States Constitution. *See* Appendix at 2a. The trial court granted summary judgment to the Defendants. The trial court's decision was affirmed on appeal. Certiorari was timely sought before the Michigan Supreme Court. It denied Petitioner leave to appeal.

Petitioner is a taxpayer organization consisting of more than five hundred (500) owners of non-homestead residential property in Michigan. The trial court granted Petitioner's motion to certify this matter as a class action, and Petitioner now represents the owners of more than 4,000 parcels of non-homestead residential real estate located within four school districts in Michigan. The State of Michigan intervened and took over the defense on behalf of the Michigan State Board of Education, the Michigan Department of Treasury, and the Michigan State Tax Commission.

This suit, seeking declaratory and injunctive relief, was brought against four school districts. Petitioner challenges the constitutional validity of Section 1211 of the Revised School Code (MCLA § 380.1 *et seq.*; MSA § 15.4001 *et seq.*).

School boards in Michigan have the right to levy up to 18 mills on property within their district. Homestead

and qualified agricultural property are expressly exempted from such millage. Michigan Compiled Laws ("MCL") § 380.1211 states:

> (1) Except as otherwise provided in this section and section 1211c, the board of a school district shall levy not more than 18 mills for school operating purposes or the number of mills levied in 1998 for school operating purposes, whichever is less. A homestead and qualified agricultural property are exempt from the mills levied under this subsection.
>
> * * *

Critically, for purposes of this taxing scheme, Michigan specifically notes in subsection (8)(d) of MCL § 380.1211 that "homestead" has a specific meaning found in MCL § 211.7dd. That section provides that,

> (a) "Homestead" means that portion of a dwelling or unit in a multiple-unit dwelling that is subject to ad valorem taxes and is owned and occupied as a **principal residence** by an owner of the dwelling or unit. (emphasis added)
>
> * * *
>
> (d) "Principal residence" means the 1 place where a person has his or her true, fixed, and permanent home to which, whenever absent he or she intends to return and that shall continue as a principal residence until another principal residence is established.

The taxing scheme challenged in this case therefore works in an extraordinarily perverse fashion. It allows taxation specifically against those who cannot vote on the tax and who cannot take any advantage of the tax they

pay. *See* Mich. Const. of 1963, art. II, § 2; and MCL § 168.492; MSA § 6.1492.

C. The Trial Court's Decision

On February 11, 1998, the Circuit Court for the County of Leelenau, based upon the cross-motions for summary disposition filed by the respective parties pursuant to Michigan Court Rule 2.116(C)(10), issued its decision. The opinion was divided into two separate parts. The *first* part addressed the Petitioner's claims based on the Privileges and Immunities Clause in Article IV, § 2 of the United States Constitution. The court held:

> The key distinction in the presentation of the parties is whether the differential treatment experienced by Plaintiffs is a function of their citizenship or, as Defendants argue, a function of their homestead status. Again, there is no dispute that vacation homes in Michigan are taxed alike, whether the owner is a Michigan resident or a non-Michigan resident. If *only* the vacation homes of non-residents were non-qualifying properties, there clearly would be discrimination based upon citizenship.
>
> Michigan property owners must designate their primary residence. Second homes do not qualify and are taxed alike and at a higher rate regardless of whether the home's owner is a Michigan resident. Quite simply, this Court sees no discrimination that occurs upon the basis of citizenship. Accordingly, there can be no violation of the Privileges and Immunities Clause. Appendix 6a.

* * *

> Further, to the extent that non-residents, by definition, who own property in Michigan will have it characterized as non-homestead, non-qualifying property and be taxed at a higher rate, the same is true for all property owned by Michigan residents other than their principal homestead. All Michigan residents who own commercial, industrial, developmental, timber, cutover, personal and non-homestead residential and non-qualifying agricultural land pay the same tax as non-residents. Paraphrasing the words of the *Toomer* Court, non-resident citizens who venture into Michigan enjoy the same privileges, which the citizens of Michigan enjoy. *Id.* at 7a-8a.

The trial court also addressed the "equal protection" claims holding:

> The parties immediately disagree with regard to the test which is to be used to evaluate Section 1211. Plaintiffs assert that the statute must be subject to a "strict scrutiny" evaluation with respect to classes B, C, D and E. The defendants assert that it is the "rational basis" test which is most appropriate. Both parties agree that a strict scrutiny analysis is required where disparate tax treatment operates in derogation of fundamental constitutional rights.
>
> The Court has not found a violation of Privileges and Immunities Clause nor has the Court found disparate tax treatment as a function of citizenship. The treatment of non-qualifying, non-homestead property in Michigan for school finance purposes is not in derogation of fundamental constitutional rights. Accordingly, the rational basis standard of review must apply. *Id.* at 8a.

* * *

> The Michigan legislature has uniformly sought to protect many legitimate interests over the years. It has promoted marriage, the rights of children and the rights of those accused of crimes. The Michigan legislature has also consistently protected and promoted homestead property. See, *Const* 1963, art 10, § 3. Other examples of legislated preferential treatment for homestead property . . . would include deferments of special assessments on homesteads of senior citizens, exemption of specially adapted housing for the homestead of certain veterans, exemption for the homestead of impoverished persons, exemption from taxation of the value of certain repairs and maintenance of homesteads, a credit against the Michigan Income Tax for property taxes paid on a homestead in excess of a calculated amount for all individuals, senior citizens and disabled individuals; a credit against Michigan Income Tax for heating fuel costs for homesteads as well as statutory preferences which impact on foreclosure actions. This Court is confident that the appellate courts of this state and the United States Supreme Court would find that the promotion of homestead property is a legitimate state interest which can support a rational differential in the tax treatment between homestead and non-homestead property. *Id.* at 11a.

D. The Michigan Court of Appeals' Decision

The Michigan Court of Appeals affirmed the lower court finding that the statute in question did not distinguish between residents and non-residents, and therefore, review under the Privileges and Immunities Clause

was not triggered. However, it recognized that when there is a challenge under the Privileges and Immunities Clause to a law distinguishing between residents and non-residents, a state must defend its position by demonstrating that (i) there is a substantial reason for the difference in treatment, and (ii) the discrimination bears a substantial relationship to the state objective. Appendix 16a. The Court of Appeals cited this Honorable Court's opinion in *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287 (1998). Appendix 16a.

The Court of Appeals went on to find that Plaintiff's "equal protection" argument also failed by applying the "rational-basis" standard to its review. The court found that there is a rational basis for granting a homestead exemption to local property owners and not to others outside the respective school districts. *Id.* at 18a-19a. It is from this decision that Petitioner took its appeal and sought relief from the Michigan Supreme Court. That court denied Petitioner leave to appeal.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari in this case because the decision below raises a fundamental question of federal law having national significance. Furthermore, it erroneously interprets the Privileges and Immunities Clause of the United States Constitution, and it ignores the fundamental bases for protecting citizens of the United States.

I. THIS ISSUE INVOLVES A FUNDAMENTAL QUESTION OF FEDERAL LAW HAVING NATIONAL SIGNIFICANCE

The statute under challenge in this case forces non-residents to pay a special tax. This tax may be alleviated only if a non-citizen becomes a citizen of that school district. The mere fact that Michigan citizens who own two homes may also be subject to this tax is not dispositive of this case. The class involved in this case consists of over 4,000 homeowners. These homeowners are located in only 4 (four) of the school districts of Michigan. Thousands more exist throughout the state. Even assuming a low valuation on these second homes, non-citizen homeowners are paying at least $4,000,000 dollars in excess taxes every year.[3] The total taxes paid by non-citizens could be a multiple of this number. The significance of this case is underscored by the presence of the interveners, the Michigan State Board of Education, the Michigan Department of Treasury, and the Michigan State Tax Commission.

This Court has long recognized that the purpose of the Privileges and Immunities Clause is to "constitute the citizens of the United States one people." *Paul v. Virginia*, 8 Wall. 168, 180 (1868). Consequently, citizens of one state should be allowed to travel between states "without being subjected in property or person to taxes more onerous than the citizens of the latter State are subjected

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[3] The class consists of over 4,000 homeowners. If one assumes that the average home is worth $100,000 and that the non-citizens are taxed at a rate of 10 mills more per home (4,000 x $100,000 x .010 = $4,000,000).

to." *Shaffer v. Carter*, 252 U.S. 37, 56 (1920). Petitioner recognizes that it must contribute its "ratable contribution in taxes for the support of the government." *Id.* at 53. However, Petitioner should not be required to pay more onerous taxes than the citizens of particular school districts in Michigan.

In this particular instance, since the tax involved is specifically designed by the local school district to support extraordinary expenditures for pupils in that district, a fair assessment of taxes would require residents to pay the tax; i.e. those who have the right to have their children attend the school and who have the right to vote on the taxes imposed on local property. It is critical in this inquiry to look at the "practical operation and effect of the tax imposed." *Id.* at 55. The practical effect and purpose of the law in question is to allow residents of a school district to impose a tax only on non-residents.

The taxing scheme under review in this case is particularly onerous. Other taxation schemes, even those struck down by this Court as violating the Privileges and Immunities Clause, have generally involved taxation for general purposes. Therefore, at least some argument could be made that the overall taxation scheme created by the state was fair. In this case, however, those who are particularly subject to the tax are prevented by law from voting on the law or from receiving any of the services provided specifically by the tax in question. Moreover, absolutely no basis exists for thinking that these homeowners impose any costs on the school district. They impose absolutely none. In addition, in other taxation cases the complaining parties generally were subject to some fraction of taxation imposed on residents. In this instance, the non-residents

are actually required to pay taxes in excess of those paid by residents who receive the services.

II. THE DECISION BELOW ERRONEOUSLY INTERPRETS THE PRIVILEGES AND IMMUNITIES CLAUSE

The two Michigan courts that considered the Privileges and Immunities Clause issue thought that the mistreatment of non-citizens of Michigan as well as Michigan citizens not residing in the particular districts insulated Michigan's tax scheme from Privileges and Immunities Clause problems. This holding is directly contrary to a decision by this Court.

In *United Building and Construction Trades Council of Camden County and Vicinity v. City of Camden*, 465 U.S. 208 (1984), this Court was faced with a municipal ordinance that discriminated against those not residing in the city. *Id.* at 216-17. The proper analysis in that case was to determine whether or not an out-of-state citizen who ventures into the state enjoyed the same privileges as the citizen residing in the municipality. *Id.* at 217. Indeed, this Court noted that the citizens of the state can remedy the injustice at the polls, the non-citizens may not. *Id.* The Petitioner in this case faces the same injustice as the petitioners in *Camden*. *See also Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60, 79 (1920) (a general taxing scheme that discriminates against all non-residents necessarily discriminates against citizens of other states).

The discrimination in this case is actually more onerous than that found in *City of Camden* and in other cases because the Michigan law under review requires the

non-resident not only to become a resident of the state but also to actually become a citizen to avoid the tax. *See United Building and Construction Trades Council of Camden County and Vicinity v. City of Camden*, 465 U.S. at 210 (required persons to be "Camden residents"); and *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985) (Piper was informed she would have to establish "a home address in New Hampshire prior to being sworn in"). In this case, out-of-state citizens must not only reside in Michigan, they must become Michigan citizens.

The tax scheme involved in this case is far more precise than that found in other states thereby making it virtually impossible to justify. This Court has established "a rule of substantial equality of treatment for the citizens of the taxing State and nonresident taxpayers." *Austin v. New Hampshire*, 420 U.S. 656, 665 (1975). In this instance, the Michigan courts did not even attempt to apply this analysis. Of course, such an analysis would need special consideration because the tax in this case is a specific tax – created by the school district for the school district. It is impossible for the school districts to show any substantial equality of treatment between residents of their school districts and non-residents.

III. THE ISSUE HAS SIGNIFICANT PUBLIC INTEREST AND IS AGAINST THE STATE OR ONE OF ITS AGENCIES

As evidenced by the intervention in the case by the State of Michigan on behalf of the State Board of Education, the Michigan Department of Treasury and the State

Tax Commission, the issue involved in this case has significant public interest and involves a legal issue that impacts citizens of numerous states. All three of the intervening defendants have a significant interest in the outcome of the suit. If the school finance law is found to be unconstitutional, then the school finance law would have to be corrected. If however, it is found to be constitutional, states throughout the country will find it beneficial to tax non-citizen homeowners at far higher rates.

IV. SIGNIFICANT EQUAL PROTECTION ISSUES ARE INVOLVED

The tax scheme involved in this case is one of the most brazen attempts by a state to impose special taxes on non-residents. Because the tax in this case imposes a special tax solely because the homeowner is a non-resident, it violates the Equal Protection Clause of the United States Constitution.

This Court has generally granted states broad leeway in imposing taxes. In equal protection cases, the state law must have a legitimate purpose and the tax must be rationally related to that purpose. *Metropolitan Life Insurance Company v. W.G. Ward*, 470 U. S. 869, 881 (1985). Those challenging a state's actions under the Equal Protection Clause generally have a difficult task.

In this case, the Circuit Court for the County of Leelanau found that the State of Michigan's interest was in the "promotion of a homestead." *See* App. 10a. The

Michigan Court of Appeals agreed. *See* App. 18a. However, the creation of a "homestead" in this case is equivalent to citizenship. Requiring non-citizens to become citizens clearly does not serve a legitimate state purpose.

Even were this Court to consider the rational relationship between homestead encouragement and the tax benefits accruing only to citizens, an issue not discussed by the Michigan Courts, it would conclude that no such rational basis existed. Indeed, under the decision rendered by the Michigan Courts, no level of taxation is inappropriate against non-citizens of these school districts.

CONCLUSION

Both the Privileges and Immunities Clause and the Equal Protection Clause are violated by the special taxes imposed on non-citizens by school districts in Michigan. The special taxes incurred by non-citizens in Michigan involve millions of dollars and thousands of out-of-state citizens. This situation is sufficiently grave to require correction by this Court.

For the foregoing reasons, the Petition for Writ for Certiorari should be granted.

Respectfully submitted,

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STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF LEELANAU

CITIZENS FOR UNIFORM TAXATION, a Michigan non-profit corporation, et al,

Plaintiffs,

v

NORTHPORT PUBLIC SCHOOL DISTRICT, a public school district within the County of Leelanau, et al,

Defendants/Cross-Plaintiffs,

and

MICHIGAN STATE BOARD OF EDUCATION, MICHIGAN DEPARTMENT OF TREASURY, AND MICHIGAN STATE TAX COMMISSION,

Intervening Defendants/
Cross Defendants.

File No. 96-3865-CZ
HON. PHILIP E. RODGERS, JR.

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DECISION AND ORDER

This case comes before the Court on the parties' cross-motions for summary disposition. The Court reviewed the parties' thorough and skillfully drafted written submissions and entertained the oral arguments of counsel on August 25, 1997. The Court then took the matter under advisement to further review the parties' arguments. The Court will now present its findings of fact and conclusions of law. MCR 2.517. For reasons that will now be described, the Defendants' motions for summary disposition are granted and that of the Plaintiffs is denied.

I. Introduction

Plaintiffs' claim is that Section 1211 of the Revised School Code MCL 380.1211; MSA 15.41211 and the property taxes levied consistent with it impermissibly interfere with Plaintiffs' fundamental rights embodied within the privileges and immunities and equal protection provisions of the United States Constitution and the equal protection provision of the Michigan Constitution. Plaintiffs complain that Section 1211 and the taxes collected consistent with it as applied to defined classes of Plaintiffs are violative of the aforementioned constitutional guarantees.

While Plaintiffs have been particularly careful throughout this litigation to argue that Section 1211 is unconstitutional only as to Plaintiffs' property and take no position regarding the broader unconstitutionality of this legislation, it is evident to this Court that Section 1211 cannot be unconstitutional in Leelanau County for

the reasons stated by the Plaintiffs without being generally unconstitutional as it would be similarly applied throughout the state of Michigan. Plaintiffs assert that the "keystone" to the analysis is the shift of local property tax revenues onto the Plaintiff classes. Yet, the tax levies do not occur independently from the statute and the Defendant School Districts have been effectively denied any meaningful choice in their determination to finance school operations consistent with the overall Michigan school finance scheme of which Section 1211 is an integral part. This Court finds the "keystone" to the analysis is a determination as to whether Plaintiffs have been caused to bear the entire burden of the school tax used to fund local schools and, if not, whether their increased burden is an impermissible function of their citizenship.

There is no dispute that the passage of Proposal A by the Michigan electorate significantly and radically changed how local public schools were funded.[1] The percentage of school finance dependent upon locally assessed and collected property taxes was reduced and additional taxes were enacted or amended to supplement the lost property tax revenue.

The constitutional analysis which follows recognizes that all taxable property in Michigan is subject to the State Education Tax. MCL 211.901, *et seq*; MSA 7.557(31), *et seq*. This tax is entirely dedicated to the State School

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[1] Proposal A is the term commonly used to describe the statewide ballot proposal submitted to and approved by the Michigan electorate on March 15, 1994, which amended the Michigan Constitution Art. 9, § 3, and dramatically altered the framework for public school financing.

Aid Fund. The State Real Estate Transfer Tax, as a part of the same package of legislation, is also dedicated entirely to the State School Aid Fund. MCL 207.521 *et seq*; MSA 7.456(21), *et seq*. Additionally, the Michigan sales tax and Michigan use taxes were increased by two percent, which marginal increase is entirely dedicated to the State School Aid Fund. MCL 205.51, *et seq*; MSA 7.521, *et seq*; and MCL 205.91, *et seq*; and MSA 7.555(1), *et seq*. Other contributions to the State School Aid Fund are derived from the Michigan Income Tax, MCL 206.1, *et seq*; MSA 7.557(1), *et seq*, and an increase in the tax on cigarettes and tobacco products. 1993 PA 327, MCL 205.427; MSA 7.411(37).

Finally, and most importantly for this litigation, all non-homestead, non-qualifying property located within the state of Michigan bears a tax of 18 mills for local school operating purposes. This includes all commercial, industrial, developmental, timber, cut over, personal and non-homestead residential and non-qualifying agricultural land. There is also no dispute that the majority of these taxes are paid by Michigan residents. It is evident to this Court that non-resident property owners do not bear the "entire tax burden" of supporting local schools. The Court will now examine whether Plaintiffs' increased tax burden is an impermissible function of their citizenship.

II. Privileges and Immunities Clause

The parties disagree as to the analytical steps necessary to a determination as to whether the Privileges and Immunities Clause has been violated. Defendants agree that their "first step" is not an articulated preliminary step, but rather a "necessary predicate" to a privileges

and immunities analysis. This "necessary predicate" is whether any discriminatory treatment exists.

The parties agree as to the next two steps. They are whether or not a fundamental right is impacted by discriminatory treatment and, if so, whether or not the differential treatment is justified through independent reasons. The Court agrees that if there is no discrimination based upon the citizenship of individuals, there can be no violation of the Privileges and Immunities Clause and further analysis is unnecessary.

The purpose of the Clause was described by Justice Field in *Paul v Virginia*, 75 US 168; 19 L Ed 357 (1869), in the following manner:

> It was undoubtedly the object of the Clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it ensures to them and other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. *Id.*, p. 180.

In the case now before the Court, Plaintiffs complain that as non-residents their second homes in Michigan are taxed at the higher rate associated with all non-homestead, non-qualifying property located within the state of Michigan. However, Michigan residents pay the same tax

on their non-homestead, non-qualifying property. In that light, the more recent comments of the Supreme Court on the purpose of the Privileges and Immunities Clause are instructive to this Court.

> [The Privileges and Immunities Clause] was designed to ensure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy. For protection of such equality the citizen of State A was not to be restricted to the uncertain remedies afforded by diplomatic processes and official retaliation. *Toomer v Witsell*, 334 US 385, 395; 68 S Ct 1156; 92 L Ed 1460 (1948).

The key distinction in the presentation of the parties is whether the differential treatment experienced by Plaintiffs is a function of their citizenship or, as Defendants argue, a function of their homestead status. Again, there is no dispute that vacation homes in Michigan are taxed alike, whether the owner is a Michigan resident or a non-Michigan resident. If *only* the vacation homes of non-residents were non-qualifying properties, there clearly would be discrimination based upon citizenship.

Michigan property owners must designate their primary residence. Second homes do not qualify and are taxed alike and at a higher rate regardless of whether the home's owner is a Michigan resident. Quite simply, this Court sees no discrimination that occurs upon the basis of citizenship. Accordingly, there can be no violation of the Privileges and Immunities Clause. *Id.*

Applying the analysis recognized by the parties nonetheless, the Court must determine whether a fundamental right has been impacted. Fundamental rights are

those where interference would "hinder the formation, the purpose, or the development of a single Union . . . " *Baldwin v Montana Fish & Game Comm*, 435 US 371, 383; 98 S Ct 1852; 56 L Ed 2d 354 (1978). Second, if a fundamental interest is at issue, the Privileges and Immunities Clause is not offended so long as the distinction between residents and non-residents may be justified. In *Toomer*, the Supreme Court wrote as follows:

> [The Privileges and Immunities Clause] does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principal [sic] that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures. *Id.* p 396.

The Michigan legislature and the Michigan electorate have instituted a program of public school finance that alleviates the heavy tax burden on principle [sic] residences. The promotion and protection of principal homesteads is, without question, a proper state purpose under privileges and immunities analysis. However, it must not be forgotten that Proposal A is not directed solely against non-residents. Rather, this new public school finance scheme is part of a package of legislation that derives revenue from a wide variety of sources. See, discussion, above, p 3. Further, to the extent that non-residents, by

definition, who own property in Michigan will have it characterized as non-homestead, non-qualifying property and be taxed at a higher rate, the same is true for all property owned by Michigan residents other than their principal homestead. All Michigan residents who own commercial, industrial, developmental, timber, cutover, personal and non-homestead residential and non-qualifying agricultural land pay the same tax as non-residents. Paraphrasing the words of the *Toomer* Court, non-resident citizens who venture into Michigan enjoy the same privileges which the citizens of Michigan enjoy.

III. Equal Protection Clause

The parties immediately disagree with regard to the test which is to be used to evaluate Section 1211. Plaintiffs assert that the statute must be subject to a "strict scrutiny" evaluation with respect to classes B, C, D and E. The Defendants assert that it is the "rational basis" test which is most appropriate. Both parties agree that a strict scrutiny analysis is required where disparate tax treatment operates in derogation of fundamental constitutional rights.

The Court has not found a violation of the Privileges and Immunities Clause nor has the Court found disparate tax treatment as a function of citizenship. The treatment of non-qualifying, non-homestead property in Michigan for school finance purposes is not in derogation of fundamental constitutional rights. Accordingly, the rational basis standard of review must apply.

As the Intervening Defendants properly note, it is the obligation of the party challenging the disparate tax treatment to negate every conceivable basis for such differential treatment. It is not the obligation of the Intervening Defendants to provide the Court with those reasons. *Regan v Taxation With Representation of Washington*, 461 US 540, 547; 103 S Ct 1997; 76 L Ed 2d 129 (1983), citing *Maddon v Kentucky*, 309 US 83, 87-88; 60 S Ct 406; 84 L Ed 590 (1940). Intervening Defendants also direct this Court's attention to the U.S. Supreme Court opinion in *Nordlinger v Hahn*, 505 US 1, 15; 112 S Ct 2326; 120 L Ed 2d 1 (1992), where the Court wrote as follows:

> To be sure, the Equal Protection Clause does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification. *United States Railroad Retirement Bd. v. Fritz*, 449 U.S., at 179, 101 S.Ct., at 461. See also *McDonald v. Board of Election Comm'rs of Chicago*, 394 U.S. 802, 809, 89 S.Ct. 1404, 1408, 22 L.Ed.2d 739 (1969) (legitimate state purpose may be ascertained even when the legislative or administrative history is silent). Nevertheless, this Court's review does require that a purpose may conceivably or "may reasonably have been the purpose and policy" of the relevant governmental decisionmaker. *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 528-529, 79 S.Ct. 437, 442, 3 L.Ed.2d 480 (1959). See also *Schweiker v. Wilson*, 450 U.S. 221, 235, 101 S.Ct. 1074, 1083, 67 L.Ed.2d 186 (1981) (classificatory scheme must "rationally advanc[e] a reasonable and *identifiable* governmental objective" (emphasis added)).

The Intervening Defendants offer the promotion of a homestead as a legitimate state purpose. This Court must agree and finds the analysis of the New Jersey Supreme Court in *Rubin v Glaser,* 83 NJ 299; 416 A2d 382 (1980), helpful although not dispositive. Plaintiffs properly note that *Rubin* was not heard by the United States Supreme Court and represents only one decision rendered by one state's Supreme Court. However, *Rubin* is the only case cited to this Court which addresses the denial of property tax exemptions for vacation property where the issues of the Privileges and Immunities Clause and Equal Protection Clause were raised. The New Jersey Supreme Court held in *Rubin* that the homestead exemption was one of statewide application which reflected a deliberate determination by the legislature to promote homesteads by "alleviating the heavy realty tax burden" from school finance taxation on a statewide basis. *Id.,* p 386.[2]

Discussing the Plaintiffs' equal protection clause challenge in similar circumstances, the *Rubin* Court wrote as follows:

> There has been no meaningful restriction on [plaintiff's] fundamental right to travel and so the burden does not rest upon the State to establish a compelling state interest to justify the law. . . . Denial of a homestead rebate on a vacation home does not rise to the level of a

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[2] A number of competing decisions were cited by the Plaintiffs. However, those cases do not involve property tax exemptions for vacation property in difference to homestead property. The Court will not repeal that analysis or provide the citations other than to refer to Intervening Defendants' Rejoinder Brief at pp 10 and 11.

> deprivation of "a basic necessity of life" or of a "fundamental" right. Furthermore, the homestead rebate is not denied to those persons, and only those persons, who have exercised their constitutional right of interstate migration. . . . Moreover, the Act contains no residential durational element of the type which has been held invalid where the individual has been required to have resided within the state for a minimum period of time. *Id.*, p 387.

The Michigan legislature has uniformly sought to protect many legitimate interests over the years. It has promoted marriage, the rights of children and the rights of those accused of crimes. The Michigan legislature has also consistently protected and promoted homestead property. See, *Const* 1963, art 10, § 3. Other examples of legislated preferential treatment for homestead property is found in the Intervening Defendants' Rejoinder Brief at p 14 and would include deferments of special assessments on homesteads of senior citizens, exemption of specially adapted housing for the homestead of certain veterans, exemption for the homestead of impoverished persons, exemption from taxation of the value of certain repairs and maintenance of homesteads, a credit against the Michigan Income Tax for property taxes paid on a homestead in excess of a calculated amount for all individuals, senior citizens and disabled individuals; a credit against the Michigan Income Tax for heating fuel costs for homesteads as well as statutory preferences which impact on foreclosure actions. This Court is confident that the appellate courts of this state and the United States Supreme Court would find that the promotion of homestead property is a legitimate state interest which can

support a rational differential in the tax treatment between homestead and non-homestead property.[3]

For all the foregoing reasons, this Court believes that the Plaintiffs' motion for summary disposition must be denied, the motions of the Defendants and Intervening Defendants granted and the case dismissed with prejudice. The issues raised within this case involve a public question and no costs will be assessed.

/s/ Philip E. Rodgers, Jr.
HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 2/11/98

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[3] The analysis of the United States Supreme Court in *Camps Newfound/Owatonna Inc v Town of Harrison*, ___ US ___; 117 S Ct 1590; 137 L Ed 2d 852 (1997), is a Commerce Clause analysis which is inapplicable here. For reasons the Court believes are self-evident, a Commerce Clause analysis is not applicable to a constitutional challenge to the differential tax treatment of non-homestead property under the Privileges and Immunities Clause or the Equal Protection Clause. Further, as noted above, the tax is not levied solely upon non-resident owners of vacation property but is equally applicable to the second homes owned by Michigan citizens.

STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS FOR UNIFORM TAXATION,

Plaintiff-Appellant,

v

NORTHPORT PUBLIC SCHOOL DISTRICT, LELAND PUBLIC SCHOOL DISTRICT, GLEN LAKE COMMUNITY SCHOOL DISTRICT and SUTTONS BAY SCHOOL DISTRICT,

Defendants-Appellees,

and

STATE BOARD OF EDUCATION, DEPARTMENT OF TREASURY, and STATE TAX COMMISSION,

Intervening Defendants-Appellees.

FOR PUBLICATION
January 7, 2000
9:05 a.m.

No. 209901
Leelanau Circuit Court
LC No. 96-003865 CZ

Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

McDONALD, P.J.

Plaintiff appeals as of right the circuit court's order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants. We affirm.

This appeal involves the constitutionality of the Legislature's amendment of § 1211[1] of the Revised School Code, MCL 380.1 *et seq.*; MSA 15.4001 *et seq.*, following voter approval of Proposal A, which amended Const. 1963, art 9, § 3 and dramatically changed the financing of Michigan's K-12 public schools.[2] Section 1211 governs the levying of school operating property taxes and authorizes local school districts to levy a maximum of eighteen mills for school operating purposes, but exempts homesteads and qualified agricultural property from these mills, MCL 380.1211(1); MSA 15.41211.

Plaintiff is a taxpayer organization comprised of owners of non-exempt property in Leelanau County's four public school districts. Plaintiff initiated this class action suit against defendants, the four public school districts in Leelanau County seeking declaratory and injunctive relief. Plaintiff challenged the constitutionality of § 1211, arguing that the statute violates the Privileges and Immunities Clause of the United States Constitution, US Const, Art IV, § 2, and the Equal Protection Clauses of the Michigan and federal constitution, US Const, Art IX, § 1; Const 1963, art 1, § 2. Because plaintiff's action attacked the validity of a taxing statute, intervening defendants, Michigan State Board of Education, Michigan Department of Treasury, and Michigan State Tax Commission, joined the lawsuit to represent the state's interest in

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[1] MCL 380.1211(1); MSA 15.41211(1).

[2] For an overview of public school finance reform in Michigan, see *Durant v State of Michigan* (On Remand), 238 Mich. App. 185, 605 N.W. 2d 66 (1999).

the suit. After hearing cross-motions for summary disposition, the trial court held that because the tax exemptions applied equally to residents and nonresidents, plaintiff failed to show that the statute discriminated on the basis of state citizenship. Accordingly, the trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10).

Plaintiff first argues that § 1211 violates the Privileges and Immunities Clause of the United States Constitution, US Const, Art IV, § 2. The constitutionality of a statute is a question of law that this Court reviews de novo. *Gilson v Dep't of Treasury*, 215 Mich App 43, 49; 544 NW2d 673 (1996). Statutes are presumed constitutional, and courts have a duty to construe a statute as constitutional unless unconstitutionality is clearly apparent. *Mahaffey v Attorney General*, 222 Mich App 325, 344; 564 NW2d 104 (1997).

Section 1211 provides, in relevant part:

> Except as otherwise provided . . . the board of a school district shall levy not more than 18 mills for school operating purposes or the number of mills levied in 1993 for school operating purposes, whichever is less. A homestead and qualified agricultural property are exempt from the mills levied under this subsection except for the number of mills by which that exemption is reduced under this subsection. [MCL 380.1211(1); MSA 15.41211.]

The term homestead is defined in § 1211d:

> "Homestead" means that portion of a dwelling or unit in a multiple-unit dwelling that is subject to ad valorem taxes and is owned and

> occupied as a principal residence by an owner of the dwelling or unit. [MCL 380.1211d(1)(a); MSA 15.41211(4)(1)(a).]

Section 1211d also defines the term principal residence:

> "Principal residence" means the 1 place where a person has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established. [MCL 380.1211d(1)(d); MSA 15.41211(4)(1)(d).]

The Privileges and Immunities Clause provides that "[t]he Citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several States." US Const, art IV, § 2. Its object is to "strongly . . . constitute the citizens of the United States one people by placing the citizens of each State upon the same footing with the citizens of other States, so far as the advantages resulting from citizenship in those States are concerned." *Lunding v. New York Tax Appeals Tribunal*, 522 US 287; 118 S Ct 766, 773; 139 L Ed 2d 717 (1998). "When confronted with a challenge under the Privileges and Immunities Clause to a *law distinguishing between residents and nonresidents*, a State may defend its position by demonstrating that (i) there is a substantial reason for the difference in treatment; and (ii) the discrimination bears a substantial relationship to the State's objective." *Id.* at 774, emphasis added.

However, in this case, the statute does not distinguish between residents and nonresidents. Instead, the statute distinguishes between property that qualifies as homestead property and property that does not. Section

1211 treats nonresidents who own property that does not qualify as homestead property exactly the same as Michigan residents who own property that does not qualify as homestead property, neither are eligible for the homestead exemption. Because nonresidents and residents are not treated differently, the Privileges and Immunities Clause is not implicated. See *Gilson, supra* at 49. Moreover, contrary to plaintiff's contention, § 1211 does not "impose substantially the entire tax burden on nonresident property owners." Michigan residents who own recreational property in Leelanau County are subject to the school operating mills authorized by § 1211 just the same as nonresidents who own non-exempt property. Nonresidents do not pay taxes that are "more onerous in effect than those imposed under like circumstances upon citizens of [Michigan]." *Lunding, supra* at 774. See also *Rubin v. Glaser*, 416 A2d 382, 386-387 (NJ, 1980). The trial court properly concluded that § 1211 does not violate the Privileges and Immunities Clause.

Next, plaintiff argues § 1211 violates the Equal Protection Clauses of the federal and Michigan Constitutions. Because this is also a constitutional issue, our review is again de novo. *Mahaffey, supra* at 334.

The United States Constitution, US Const, Am XIV, and the Michigan Constitution, Const 1963, art 1, § 2, guarantee equal protection of the law. The guarantees under both constitutions offer similar protection. *Doe v. Dep't of Social Services*, 439 Mich 650, 670-671; 487 NW2d 166 (1992). The equal protection guarantee requires that persons similarly situated be treated the same. *El Souri v Dep't of Social Services*, 429 Mich 203, 207; 414 NW2d 679

(1987); *In re Hawley*, 238 Mich. App. 509, 606 N.W. 2d 50 (1999).

The standard of review to be applied depends upon the classification scheme of the challenged legislation, *Doe, supra* at 662. Strict scrutiny of a legislative classification is required "only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Vargo v. Sauer*, 457 Mich 49, 60; 576 NW2d 656 (1998), quoting *Massachusetts Bd of Regents v Murgia*, 427 US 307, 312; 96 S Ct 2562; 49 L Ed 2d 520 (1976). Contrary to plaintiff's assertion, this case does not involve either a fundamental right or suspect classification. Accordingly, we apply the rational-basis standard of review. *Vargo, supra* at 60. A statute is upheld under this standard if it furthers a legitimate governmental interest and if the challenged classification is rationally related to achieving that interest. *Id.* Legislation challenged on equal protection grounds is accorded a presumption of constitutionality, and this Court's inquiry is restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it. *Id.* at 61. This presumption of constitutionality is especially strong where tax legislation is concerned. *American Amusement Co, Inc v Dep't of Treasury*, 91 Mich App 573, 576; 283 NW2d 803 (1979).

We find that the distinction between homestead and non-homestead property in § 1211 is supported by a rational basis. We agree with the trial court that the Legislature's interest in granting an exemption to homestead property is to protect and promote homestead property, see House Legislative Analysis, HB 5111, et al,

March 1, 1994, which is a legitimate state interest. Moreover, decreasing the burden of property taxes on homesteads by granting an exemption from the property tax mills authorized under § 1211 is certainly rationally related to that legitimate state interest. *See Rubin, supra* at 388. The trial court properly found no equal protection violation.

Affirmed.

/s/ Gary R. McDonald
/s/ Michael J. Kelly
/s/ Mark J. Cavanagh

Order **Michigan Supreme Court**
Lansing, Michigan

[Justices Omitted In Printing]

Entered: June 26, 2000

116242

CITIZENS FOR UNIFORM TAXATION,

Plaintiff-Appellant,

v

NORTHPORT PUBLIC SCHOOL DISTRICT, LELAND PUBLIC SCHOOL DISTRICT, GLEN LAKE COMMUNITY SCHOOL DISTRICT and SUTTONS BAY SCHOOL DISTRICT,

Defendants-Appellees,

and

STATE BOARD OF EDUCATION, DEPARTMENT OF TREASURY and STATE TAX COMMISSION,

Intervening-Defendants-Appellees.

SC: 116242

COA: 209901

LEELANAU
cc: 96-003865-CZ

On order of the Court, the application for leave to appeal from the January 7, 2000, decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

[SEAL]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 26, 2000 /s/ Corbin R. Davis